IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

REVIEW PETITION NO. 78 OF 2004
IN
WRIT PETITION NO. 5941 OF 2003

State Bank of India ... Petitioners

V/s

Dinkar G. Pathak ... Respondent

Shri C.J. Sawant, Sr. counsel with Deepa Chavan with Mayura Maru i/by M/s. Little & Co. for the petitioners.

Shri Raju Moray for the respondent.

CORAM: V.G. PALSHIKAR &
P.V. KAKADE, JJ.

DATED: 3RD NOV., 2004.

P.C.:

1. This review petition is preferred by the petitioners seeking to review and recall the order dated 5.11.2003 passed by this Court in Writ Petition No. 5941 of 1995.

2. We have heard Shri Sawant, Sr. Counsel for the petitioners and Mr. Moray for the respondent.

3. By order dated 5.11.2003, we allowed the Writ Petition No. 5941 of 1995 wherein the present

respondent had contended that he had joined the petitioner Bank as a Clerk on probation on 10.9.1965 before attaining the age of 21 years. He was confirmed in the service as a Clerk on 10.6.1966. He was promoted as an Officer on 1.5.1977 and was confirmed in such a capacity on 1.11.1977. He rendered his services till he was removed from service on 15.12.1990. It was submitted by him that till his removal he had rendered a total service of 25 years 3 months and 5 days, out of which 24 years 6 months and 5 days constitute as confirmed service. He had a balance of 6 months 13 days ordinary leave to his credit at that point of time and the respondents did permit its encashment vide sanction dated 16.9.1991 and, therefore, it was the case of the present respondent that the bank ought to have granted pension to him by virtue of Rule 22-D of the State Bank Pension Fund Rules (hereinafter referred to as the "said Rule" for the sake of brevity).

4. After hearing the present respondent and perusing the affidavits filed on behalf of the bank, we were of the view that when the petitioner became member of S.B.I. Pension Fund on the date of his confirmation in service i.e. on 10.6.1966 and, therefore, till 15.12.1990 he had completed 24 years 6 months and 5 days

of confirmed and pensionable service. The said period was required to be reckoned as service for pension as per Rule 20 & 21 and once it was done, the present respondent's pensionable service works out to 25 years and 18 months and thus he becomes entitled to get pension in accordance with Rule 22-D of the said Rules. We also noted that, in fact branch office of the State Bank at Nasik by its communication dated 8.7.1991 had informed the petitioner that the Regional Office of the bank at Pune had informed that the present respondent was entitled for the terminal benefits i.e. Provident fund, Gratuity, Pension and Leave encashment and, therefore, he was requested to complete the formalities in respect of the said aspects immediately to enable the Regional Office to forward all the documents for processing his case. However, thereafter, suddenly in the year 1995 the Bank rejected the claim of the petitioner. We further noted that the right to pension is part and parcel of the right to live with dignity which has now been judicially included in the enhanced concept of the right to live and personal liberty granted under Art.21 of the Constitution and thus respondent's impugned action of refusal of the petitioner's claim was arbitrary, unreasonable and untenable and, therefore, violative of statutory

provisions which were ex-facie beneficial to the employees.

5. On this back ground, it was now submitted that there was an error apparent on the face of the record while we passed the order in the sense that this Court misconstrued the relevant Rules and allowed the writ petition holding that the present respondent had completed 25 years of pensionable service. It was further submitted on behalf of the present petitioners that the period of 6 months and 13 days ordinary leave cannot be reckoned as pensionable service as the respondent at the time of his removal had not completed the age of 58 years as laid down in Rule 20 of the said Rules. Therefore, it was submitted that the respondent's case was not covered under Rule 22-D of the said Rules and hence the earlier order is required to be recalled.

6. We have considered the submissions made on behalf of both parties. As we have noted earlier, we must reiterate that pension is a part and parcel of the right to live with dignity and has now been judicially included in the enhanced concept of the right to live and personal liberty granted under Art.21 of the

Constitution and, therefore, bank's impugned action of refusal of the present respondent's claim would be in violation of the statutory provisions which are ex-facie beneficial to the employees. We may make note of the fact that the impugned Rules are only of the directive nature and cannot have force of mandatory statute. This is more so because basically the Pension Rules are framed only as guidelines and essentially for the purpose of benefit of the employees and, therefore, refusal to give such benefit to the employee cannot be allowed in law on any hyper technical aspect.

In the result, we are satisfied that the order passed by us is just, legal and proper and there is no apparent error on record, therefore, need not be reviewed and, as such, the review petition stands dismissed with no order as to costs.

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